

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:24-cv-22769-KMM

RICHARD RALPH MALCOLM,

Plaintiff,

v.

CITY OF MIAMI-DADE COUNTY, *et al.*,

Defendants.

---

**ORDER ON REPORT AND RECOMMENDATION**

THIS CAUSE came before the Court upon *pro se* Plaintiff's Complaint ("Compl.") (ECF No. 1) and Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 4). The Court referred the matter to the Honorable Marty Fulgueira Elfenbein, United States Magistrate Judge, who issued a Report and Recommendation recommending that the Complaint be DISMISSED WITH PREJUDICE and the Motion for Leave to Proceed *In Forma Pauperis* be DENIED AS MOOT. ("R&R") (ECF No. 8). Plaintiff did not file objections to the R&R and the time to do so has passed. As set forth below, the Court ADOPTS the R&R.

This action stems from Plaintiff's Complaint, wherein Plaintiff sues the following Defendants: (1) Katherine Fernandez Rundle, Miami-Dade County State Attorney, (2) Juan Fernandez-Barquin, Clerk of the Court of Miami-Dade County, (3) the City of Miami-Dade County, and (4) the trial court of Miami-Dade County. *See generally* Compl. Plaintiff alleges that Defendants conspired to change his 1996 "withhold of adjudication" plea deal to a felony conviction in November 2003. R&R at 2–3. For his alleged injuries, Plaintiff seeks "any and all legal relief including \$100,000,000" from each Defendant. Compl. at 2.

The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). As set forth in the R&R, Magistrate Judge Elfenbein finds that (1) Plaintiff alleges Defendants violated his Fourteenth Amendment right to due process but fails to provide sufficient factual matter to state such a claim; and (2) Defendants are entities and judicial officers that are immune from suit in actions arising under § 1983. *See* R&R at 5–8. Thus, Magistrate Judge Elfenbein recommends that the Complaint should be dismissed with prejudice and all other motions should be denied as moot. *Id.* at 8–9. This Court agrees.

Accordingly, UPON CONSIDERATION of the Complaint, the R&R, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that:

1. Magistrate Judge Elfenbein’s Report and Recommendation (ECF No. 8) is ADOPTED;
2. The Complaint (ECF No. 1) is DISMISSED WITH PREJUDICE;
3. All other motions are DENIED AS MOOT;
4. The Clerk of Court is INSTRUCTED to CLOSE this case.

DONE AND ORDERED in Chambers at Miami, Florida, this 4th day of September, 2024.



---

K. MICHAEL MOORE  
UNITED STATES DISTRICT JUDGE

c: All counsel of record